Question of the realization in all countries of economic, social and cultural rights

The Associazione Comunità Papa Giovanni XXIII and the co-signing NGOs take note of the Secretary General's Report A/HRC/25/31 on the question of the realization in all countries of economic, social and cultural rights, submitted at the 25th regular session of the Human Rights Council pursuant to Human Rights resolution 22/5. The report focuses on the right to a remedy for violations of economic, social and cultural rights as well as on access to justice.

The report contributes to strengthening the legal protection of economic, social and cultural rights by re-affirming the right to remedy for violations of human rights and the need to create remedial mechanisms at national level, as recommended already by several treaty bodies and Special Rapporteurs. It also points out that, conditions such as accessibility, affordability, information, access to adequate legal assistance, non- discrimination, timely and prompt decisions and transparency are paramount for remedial mechanisms to be effective.

In 1993, during the Vienna World Conference on Human Rights, the Committee on Economic, Social and Cultural Rights stated in its report that "States and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action"[1]. This is still true today.

It is time to translate the political affirmation of the interdependence of human rights into reality, including through strengthened legal protection of economic, social and cultural rights. There is no hierarchy of rights and therefore there should be no difference in the speed of realisation between civil, political and economic, social and cultural rights.

Article 2, paragraph 1 of ICESCR requires States parties "to take steps individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant".

As rightly pointed out by the High Commissioner for Human Rights in her report to ECOSOC in 2006[2], for the CESCR the recognition of differing obligations for economic, social and cultural rights in comparison with other rights presupposes a necessary flexibility device for States reflecting the real world, but it should not be misinterpreted as depriving the obligation of any meaningful content.

States bear the primary responsibility to protect human rights and fundamental freedom within their boundaries and must make efforts according to their capacity to realise expeditiously economic, social and cultural rights of their people by including legislation, the provision of judicial remedies, constitutional recognition as well as other appropriate administrative, financial, educational and social measures.

Unfortunately, many developing countries are not yet in a position to provide for the full realisation of economic, social and cultural rights of their people; they often lack the financial resources and the technical capacities to effectively meet their obligations. Especially in view of expanding global interdependence, it is imperative to recognize that the respect of human rights is a shared responsibility between all members of the international community, States and non-states actors.

Therefore, we regret the fact that the Secretary General's report focuses only on the domestic level without mentioning at all international structural obstacles that are main root causes of violations of economic, social and cultural rights as well as the perpetuation of poverty and increase of inequities worldwide. Such obstacles are, inter alia, the current

[1] A/CONF.157/PC/62/Add.5, para. 5
[2] E/2006/86

international trading system, the profit-oriented market economy and unregulated finance, the asymmetries of power in global governance, environmental degradation and resource depletion, unequal access to information and technology, the problem of external debt for many countries, the issue of property and intellectual rights, lack of protection and remedies against the negative effects of globalisation, conflicts and arms trade, international crime and corruption, the prevailing of greediness on solidarity etc.

The Maastricht Principles issued on 28 September 2011 by 40 international law experts from all regions of the world, including current and former members of international human rights treaty bodies and regional human rights bodies as well as former and current Special Rapporteurs, affirm clearly that the human rights of persons, groups and peoples are affected by and dependent on the extraterritorial acts and omissions of States. The advent of economic globalization in particular, has meant that States and other global actors exert considerable influence on the realization of economic, social and cultural rights across the world, i.e., extraterritorial influence.

It is time to fulfil extraterritorial obligations[3] that are contained in the international human rights law, including the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, other universal and regional instruments and international declarations. It is also time to address the need of remedies at international level.

Without addressing the root causes of violation of economic, social and cultural rights and surmounting the structural international obstacles that contribute to the increase of inequities in the world, it is quite unrealistic to speak about remedies and access to justice only at national level, especially for the least developed countries.

Moreover, it will be difficult, if not impossible, for the millions of starving people whose right to food is violated to claim their right, or for the millions of illiterates in the world who are not able to know their rights, to ask for remedies. Millions of children and adults who don't have yet access to medicines will die before being able to claim a remedy.

As Pope Francis says in his Apostolic Exhortation "Evangelii Gaudium" it is time to say no to an economy of exclusion, no to the new idolatry of money, no to a financial system which rules rather than serves, no to the inequality which spawns violence, bearing in mind that "Inequality is the root of social ills".

The full realization of the rights to health, food, education, shelter, work, safe drinking water and sanitation, and other economic, social and cultural rights, will occur when the principle of equitable contribution and access to and sharing of the benefits of development lead the political choices of States and non-States actors. In this regard, setting the goals, targets and indicators for the Post-2015 Development Agenda will be a great opportunity that shouldn't be missed, to progress towards social justice and solidarity as well as a cut off mark to unveil political will.

We urgently need the creation of an enabling international and national environment as envisaged by the Declaration of the Right to Development (RTD) and further strengthened by recognition sought for other solidarity rights such as the Right to International Solidarity and the Right to Peace.

APG 23 and the co-signing NGOs participate actively to the Open Ended Intergovernmental Working Group (OEIWG) on the RTD by proposing criteria and sub-criteria for the implementation of right to development genuinely relevant for the life of people living in poverty and the most vulnerable.
Special attention is given to economic, social, cultural rights whose realisation is essential for the exercise also of political, civil rights.

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[3] Extraterritorial Obligations according to the Maastricht Principles are:
a) obligations relating to the acts and omissions of a State, within or beyond its ter- ritory, that have effects on the enjoyment of human rights outside of that State's territory; and
b) obligations of a global character that are set out in the Charter of the United Nations and human rights instruments to take action, separately, and jointly through international cooperation, to realize human rights universally.

In the OEIWG on Right to development, we NGOs advocate for the use of human rights language in revising the work of the High Level Task Force[4], and propose new criteria and sub-criteria that will be consistent with the creation of enabling national and international environment[5]conducive to the implementation of right to development.

For example, "free access to effective justice" is a new sub-criterion that we will suggest on the criterion 2(c) "to ensure non discrimination, access to information, participation and effective remedies" at the 15th session of the OEIWG on RTD that will take place in May.

In fact, people living in poverty, especially those living in rural areas, of developing countries face many obstacles in accessing effective justice including lack of money to reach the court and pay a lawyer, inability to explain and claim their rights because of illiteracy, lack of facilities for communication etc.

Building up a system that guarantees free access to national justice will contribute to raise awareness in the citizens and fight local corruption.

In conclusion, the co-signing NGOs support the necessity of remedies for the violation of economic, social and cultural rights as stated by the Secretary General report. On the other hand, being constantly present at grass-root level and working with people living in poverty, we would like to emphasize that such remedies should not be limited at a domestic level but established also at regional and international level.

Moreover, we urge all States that have not yet signed and ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights of 5 May 2013 to do so as it is a step forward in strengthening the promotion and protection of economic, social and cultural rights worldwide.

We also encourage States to use the Guiding Principles on Extreme Poverty and Human Rights[6] in the formulation and implementation of poverty reduction and eradication policies.

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[4] A/HRC/15/WG.2/TF/2/Add.2: The right to Development Criteria and Operational Sub-Criteria

[5] A/HRC/WG.2/14/CRP.5

[6] A/HRC/21/39